

RULES COMMITTEE
of the
SUFFOLK COUNTY LEGISLATURE

Minutes

A regular meeting of the Rules Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, 725 Veterans Memorial Highway, Smithtown, New York on Thursday, **December 2, 2004**.

MEMBERS PRESENT:

Legislator Allan Binder, Chairman

Legislator Michael Caracciolo, Vice•Chair (excused absence)

Legislator Jon Cooper

Legislator John M. Kennedy, Jr.

Legislator William Lindsay

ALSO IN ATTENDANCE:

Legislator Brian X. Foley, Seventh District

Mea Knapp, Counsel to the Legislature

Ellen Martin, Aide to Legislator Binder

Meaghan O'Reilly, Aide to Presiding Officer Caracappa

Jim Spero, Director, Budget Review

Ben Zwirn, Assistant Deputy County Executive

MINUTES TAKEN BY:

Diana Kraus, Court Stenographer

(THE MEETING CONVENED AT 3:11 PM)

CHAIRMAN BINDER:

Let's rise for the Pledge of Allegiance led by Legislator Foley.

(SALUTATION)

CHAIRMAN BINDER:

The Rules Committee will come to order.

LEG. COOPER:

Mr. Chair, I need an agenda.

CHAIRMAN BINDER:

An agenda's coming. On its way. Legislator Foley, very nice tie today.

LEG. FOLEY:

Thank you. It matches my shirt.

CHAIRMAN BINDER:

It does. I was wondering why I couldn't see it. You just explained it. I feel much better. Okay.

1891, local law to authorize implementation of subscription service fee schedule for County Clerk. Counsel, any problems with that; any questions?

MS. KNAPP:

No problem.

CHAIRMAN BINDER:

And just before we do the first vote, just for Legislator Kennedy's sake, we don't approve or table bills here. What we do only is to report them out; and if it's not reported, it stays on the agenda. If reported out, it goes to the full Legislature. But there's no tabling. If it doesn't get enough votes, it's not like it's defeated here. And there's no motion to table. It's just either to report or not. Reporting might not mean that you agree or disagree with the legislation. It's just that you're reporting it out to the floor. It's not a question of approval.

LEG. KENNEDY:

Thank you.

CHAIRMAN BINDER:

Okay. 1891 is a local law •• I said that. I have a motion to report by Legislator Lindsay, myself second. All those in favor? Opposed? **1891 is reported out. (4•0•0•1. Leg. Caracciolo not present)**

1928, local law to established smoke free school bus stops in Suffolk County. I had asked •• and I don't know because she went home sick •• Linda Bay to call Will Stoner, the Heart, Lung and Cancer societies. Normally we don't do specifics or get into details too much. But before I'm comfortable with putting something on the floor that I think is completely ridiculous and a waste of time to be honest, I wanted to hear from them and I wanted to hear some justification why •• just from them. And I heard they spoke at the Health Committee. And I was hoping they'd come here. So, I'd like to hold this up at least a meeting so we can have them here. And I don't know why they're not. I don't know if they were contacted, but we'll make sure they are contacted before the next meeting. And I want to •• I definitely want to hear from them before I'm comfortable before reporting. Legislator Cooper.

LEG. COOPER:

I have a question for Legislative Counsel. Is there an issue of state preemption in this case?

MS. KNAPP:

No. We seemed to established that there is enough ground that allows for County regulation of smoking and tobacco products.

CHAIRMAN BINDER:

Do we know what a school bus stop is?

MS. KNAPP:

That is a •• it's a definitional question. And it's one that I've had some discussion with the County Attorney's about. I think that they were satisfied with the difficulties presented by trying to define something that does change on an annual basis so that we both agreed to go

with what may be arguably an unclear definition.

CHAIRMAN BINDER:

Right. And you're you're saying it's on an annual basis. It could be more than an annual. It could change during the year for other reasons because a child was not able to walk or something; so they put it in front of that child's house instead of another child's house. I mean it could change.

LEG. COOPER:

What difference would it make where the bus stop is?

CHAIRMAN BINDER:

Because you have to define where the •• what the area is under the law that you'd be in violation of within 50 feet in a radius of that area. So, if you don't know at the moment what the bus stop is, you don't know if you're in violation. And there's an exemption for the home of a person; and so you don't know whose home it is if you haven't defined who is the official bus stop, and who determines it. So it's somewhat problematic for enforcement purposes. And then it's a legal question because you have to give some opportunity for enforcement to do enforcement and know how to do enforcement who's ever going to enforce it.

Legislator Lindsay.

LEG. LINDSAY:

And it only applies when the children are there waiting for the bus?

MS. KNAPP:

Yes, when children are present at such designated school bus stop.

CHAIRMAN BINDER:

Could you read the provision on when children are present?

MS. KNAPP:

"Smoking is prohibited within a fifty foot radius of any designated school bus stop located within the County of Suffolk while children are present at such designated school bus stop; except that this section shall not prohibit the owner occupant of any private residence adjacent to the

school bus stop from smoking at their residence."

CHAIRMAN BINDER:

So, what if the child is at the bus stop but it's not time to be picked up but they're at •• that's the bus stop. It is a bus stop. It's still the official bus stop. There's just no bus coming at that particular moment. Let's say it's in the middle of the day or it is a holiday so there's no bus coming that day but it's still the bus stop. Because that's the problem with the definition again. Is it still a bus stop when there's no bus coming? So now is that area always "the bus stop"? And that means that area on that block always has a fifty foot ban •• I mean this is the problem with the legal question.

LEG. LINDSAY:

Only when children are present.

CHAIRMAN BINDER:

Right, but •• so let's say it's two o'clock in the afternoon and I didn't go to school. I was, you know, sick. So I go out and I'm playing basketball because the basketball is within that fifty foot radius of it. There's no bus coming. But if an adult comes over to talk to me and he's smoking, is he now violating because he's within the fifty foot radius and one of the children •• a child is at that bus stop?

LEG. COOPER:

I would say yes.

CHAIRMAN BINDER:

Yes. In the middle of the day. So, in other words, is the smoke•free zone all day 24 hours a day, at two o'clock in the morning hanging out by the bus stop hoping •• the kids are just kind of hanging out. And if somebody lights up, they're in violation. But if they walk three feet to the left, they're not out of the zone of the violation. Anyway, if you want to report it ••

LEG. COOPER:

No. That's •• obviously the Health Committee must have heard all the testimony for and against.

CHAIRMAN BINDER:

I don't know if they did. I don't know if they've gone over the legal question.

LEG. COOPER:

But I mean •• it was approved unanimously 8•0 by a Republican controlled Health Committee. So, I'm assuming that ••

CHAIRMAN BINDER:

Actually that's a Democrat controlled Health Committee, but that's okay. These thing do periodically ••

LEG. COOPER:

Are you sure about that?

CHAIRMAN BINDER:

Yeah, yeah, this happens.

LEG. COOPER:

Oh, you're including Paul among the Democrats?

CHAIRMAN BINDER:

No. Well, maybe. I think even with Paul, if we were to include him. Yes. Tell me what the County Executive thinks of this. I'm just curious, as long as we got you here, Ben.

LEG. LINDSAY:

Why don't you jump in in the middle of the debate?

MR. ZWIRN:

You look like you're having so much fun that I could hardly contain myself.

CHAIRMAN BINDER:

I can see you want to join us.

MR. ZWIRN:

The fact is this bill is unenforceable. I mean there's just no •• school bus stops are not

designated; not like a ••

LEG. COOPER:

Allan, will you support it?

MR. ZWIRN:

Not like a municipal bus stop where you can identify where they are.

LEG. COOPER:

Because they're opposed to it.

CHAIRMAN BINDER:

I find myself in the uncomfortable position of agreeing with Ben again.

MR. ZWIRN:

When my kids used to go to the bus stop, it was near the train station and people would walk •
• commuters would be walking by constantly on their way to work •• on the way to the train. If
they were smoking a cigarette, conceivably they could be, you know, stopped and given a
citation for just walking to the train never knowing what happened. It's just one of those bills.
The Health Department has to enforce this county•wide. That's from Montauk to Huntington. I
mean this is just •• how many bus stops are •• it's just overwhelming. And it's just in the
County Exec's opinion this is just going too far. My personal feeling is that this bill passed
because of the others anti•tobacco bill that was on the agenda that day. And it managed to
piggyback the good will that that particular bill had generated.

CHAIRMAN BINDER:

Well, I'd like to have •• as I say I would like to have at this Committee the Cancer Society, the
Heart and Lung Association. My guess is they're not going to come. Let me tell you why I think
they're not going to come just to put it on the record. They all oppose the bill to ban smoking
in cars with children.

LEG. COOPER:

I knew what this is about.

CHAIRMAN BINDER:

And I find •• I would love to •• unfortunately I wasn't at the Health Committee hearing and they supported this. They amazingly supported this. So, they think it's •• we should ban around children in an open area; but if you're in the car with the windows closed, that's great. That's fine. We could do that to the kids any time. So, I would love to have them here. Before I'm ready to pass this out, I want them at this Committee so I can understand the ••

LEG. LINDSAY:

Torture.

CHAIRMAN BINDER:

Yes, torture is probably the word that comes to mind, Legislator Lindsay. But my guess is they'll never come here and give me that opportunity. But I'd love to have them here to understand the difference. And so I'm going •• I'm not going vote to report it until I get a chance to have them here to talk to me.

LEG. COOPER:

Legislative Counsel, do you agree that there •• are there legal questions that •• I know that Legislator Binder has some reasons to not support the legislation, but are there legal questions or should we report this to the full Legislature and we can have this debate on Tuesday?

MS. KNAPP:

Well, I can't speak to the second part of it. But in terms of •• certainly in drafting, I recognize that designated school bus stop might be unclear. And I did speak with members of the County Attorney's staff. And we actually worked together in trying to come up with a definition that would be easier. But I think that we both agreed after fairly lengthy discussion that designated school bus stop was going to have remain that because, you know, I referred to a change on an annual basis; however, there are sometimes changes during the course of the school year. If a •• you know, if a particular family complains about a school bus stop being in front of their house, they will sometimes move it, you know, a hundred feet in one direction or another. So that we are going to have to rely on whatever the school designated as a school bus stop as being our basis for definition.

LEG. COOPER:

Was this modeled after legislation, local law in effect anywhere else or is this landmark

legislation? In which case, it should have been mine.

MS. KNAPP:

It's not quite. It's not quite landmark legislation. There is a •• there's a County in Florida that prohibits smoking in parks that are primarily •• where they have playgrounds for children.

CHAIRMAN BINDER:

Right. But we know what a park is. It's designated as a park. And we know that the playground is there. In fact, I mean •• I thought as a legal question, I definitely have big concerns. And secondarily I really did want the different Heart, Lung and Cancer Societies, Associations to come down here and talk to us.

LEG. COOPER:

Will your office reach out Mr. Stoner and ••

CHAIRMAN BINDER:

Oh, absolutely. Absolutely, absolutely.

LEG. KENNEDY:

Mr. Chairman?

CHAIRMAN BINDER:

I look forward to it. Legislator Kennedy.

LEG. KENNEDY:

I'd just like to follow•up on some of the implementation issues and certainly with Mr. Zwirn had to say. Would we anticipate that all 110 school districts in the County of Suffolk are then going to forward the list of bus stops for each district to the Health Department for the sanitarians or whomever is going to enforce the compile ••

CHAIRMAN BINDER:

I don't know if that's in the bill. That's a good question. Is that in the bill? Is there a mechanism for us to be informed so we know where they are? So we have that information? And we update it?

MS. KNAPP:

That is not in the bill. It is an amendment to a section of law that contains, you know, a fairly substantial list of smoking regulations.

CHAIRMAN BINDER:

Do we have the right under the law to direct any school district to tell us or to give us a list of all the bus stops? And, by the way, do we want such a list to be •• post 9/11 world, do we want such a list to actually be circulating? That's another question on top of it. But do we have the right to tell them that under the law?

MS. KNAPP:

We don't have the right to compel the school districts, no.

CHAIRMAN BINDER:

Okay.

LEG. KENNEDY:

One last question. What would we do with the fines? Assuming that there was a successful violation and a fine tended, does that go into tobacco education or cessation or anything that's, you know ••

CHAIRMAN BINDER:

Well, Legislator Tonna's office gets a new •• I don't know. I'm just kidding.

LEG. KENNEDY:

I'm just curious. That's all.

MS. KNAPP:

It is part of a •• it's an amendment to an existing list. So, whatever fines are •• they're provided for under the existing ••

CHAIRMAN BINDER:

Probably General Fund. Probably goes in the General Fund.

LEG. KENNEDY:

Thank you.

CHAIRMAN BINDER:

Okay. So, I'm not making a motion. Anybody here wants to make that motion, 1928? If no motion, we'll go onto **1973, local law amending Suffolk County Code Chapter 277 in relation to procedures for criminal history record screening.** Let me ask Counsel on that. That was for •• I'm trying to remember which ••

MS. KNAPP:

This is basically the local law that allows County to continue •• well, to use CJCS, something, whatever, the state facility that does this fingerprint screening. There is a requirement that the County enact a local law to ••

CHAIRMAN BINDER:

So, it's for home health care, is it?

MS. KNAPP:

It's for emergency shelters. Congregate.

CHAIRMAN BINDER:

Oh, okay. Now, we're already doing it for emergency shelters? This is just to extend our use of them?

MS. KNAPP:

I'm not sure. I believe that we are doing it even though we did not have a local law in place. I believe that we are, but I'm not certain of that.

CHAIRMAN BINDER:

Okay. Motion to report 1973, Legislator Cooper, second by Legislator Kennedy. All those in favor? Opposed? **1973 is reported. (4•0•0•1. Leg. Caracciolo not present)**

1974, local law amending Suffolk County Code Chapter 277 in relation to standards for screening of certification applicants and employees of congregate emergency

shelters. This is for the shelters.

MS. KNAPP:

But these are the standards. The other was the procedure.

CHAIRMAN BINDER:

Okay.

MS. KNAPP:

These are the standards. They're companion bills.

CHAIRMAN BINDER:

Motion by Legislator Lindsay, second by Legislator Cooper. All those in favor? Opposed?

1974 is reported. (4•0•0•1. Leg. Caracciolo not present)

1981, adopting a local law to update Suffolk County Living Wage Law. Other than the fact that this is the 100th update of the law and that obviously wasn't ready when it was passed at all, which is what I said at the beginning, I just like to pat myself on the back once in a while on the record. There are no other legal questions? This is •• probably not but ••

MS. KNAPP:

No. It is just amendments and updates. There are some substantive changes and we did talk a little bit about those.

LEG. COOPER:

I actually have a question, I guess, for the Chair. Maybe you'll be able to answer this. Whether you're ever going to stop gloating about this law?

CHAIRMAN BINDER:

Well, as I watch child•care providers getting off the rolls, home health care providers going out of business or leaving, and then us having a harder time finding •• and all these things that I said were going to happen happened. And I think, in effect, you know, not a lot of good has come of this at all. In fact, I would bet that some people lost other benefits because they went over •• they got a little bit more pay, which then they had to drop off of maybe food stamps or other things. In the end I don't know that we did so much good. So, it made us feel good, but

I don't know what it actually did. So, no, I won't stop gloating, actually.

LEG. LINDSAY:

I really don't want to re•debate the Living Wage Bill. So, I'm going to make a motion to report it out.

LEG. COOPER:

Second.

CHAIRMAN BINDER:

Well, he prompted me. There you go. Good move. Second by Legislator Cooper. All those in favor? Opposed? **1981 is reported. (4•0•0•1. Leg. Caracciolo not present)**

The next one's gone. I don't know what happened. No, no, it wasn't supposed to be on here. It was a mistake. So, don't think it disappeared or half disappeared.

2081, local law prohibiting the sale of tobacco products or herbal cigarettes, rolling papers or pipes to anyone under the age of 19.

I would let you make the motion to report, Legislator Foley, but you're not on the Committee. Motion to report. I'll even take that; how's that? Motion to report myself, second by Legislator Cooper. Are there any questions in terms of •• legal questions about us changing this age, field preemption or any other questions?

LEG. LINDSAY:

With the exception of the bus stop.

CHAIRMAN BINDER:

Well, no. You have to be •• you can still be 18 at the bus stop. You can buy them •• no, forget it. Anyway. Counsel, legal questions.

MS. KNAPP:

I see Legislator Foley has included where the State Health Department has opined in the newspaper that we can do this. And I would certainly repeat that in •• there's a quote from a Law Review article that goes on for 13 pages with various cases discussing this issue, but ends

with the sentence that ends "the future looks bright for tobacco control at the local level in New York State."

CHAIRMAN BINDER:

It's a good bill, Legislator Foley.

LEG. FOLEY:

Thank you.

CHAIRMAN BINDER:

And I think •• I would be surprised if you didn't have 18 co•sponsors let alone 18 votes. So, we have a motion and a second to report. Any discussion? If not? All in favor? Opposed?

Approved. (4•0•0•1. Leg. Caracciolo not present) Finally, a smoking bill that I could support. I love it.

LEG. FOLEY:

It's historic.

CHAIRMAN BINDER:

It is historic.

Sense.076, sense of the Legislature resolution that New York State Legislature exempt solar power producing equipment from all sales taxes. We need those sales taxes, Legislator Lindsay. Legislator Lindsay makes a motion to report, second by Legislator Cooper. All those in favor? Opposed. **Sense 76 is reported. (4•0•0•1. Leg. Caracciolo not present)**

Sense.077, sense of the Legislature resolution requesting the State government to amend the New York State Racing, Pari•mutual Wagering and Breeding Law to benefit local government. It's the breeding part or the wagering part?

LEG. LINDSAY:

It's to give the money back that they've been taking away from us.

CHAIRMAN BINDER:

Well, we want that money. So, Legislator Lindsay will make a motion to report.

LEG. COOPER:

I'll second the motion but I have a question. What does breeding refer to?

CHAIRMAN BINDER:

The law covers the breeding of race horses.

LEG. LINDSAY:

Yes.

LEG. COOPER:

Oh. Thank you.

LEG. LINDSAY:

Yeah. The horse owners get a big share; a bigger and bigger share of the pie over the last twenty years. They've gotten more. We've gotten less.

CHAIRMAN BINDER:

Right. We want more. Right. My understanding, by the way, just as an aside, my understanding is that there are going to be numbers coming out. A little birdy tells me that from our OTB, the numbers are going to be horrific in terms of the amount of money that we've gotten. So, this is rather timely, sense 77.

LEG. LINDSAY:

Well, some of the changes were very recent within the last couple of years. They've changed the cut. And we are on the downside of that.

CHAIRMAN BINDER:

Right. My understanding the difference between 2003, 2004 or whatever the last reporting year is precipitous. So, we're going to have to take a look at that. That report is coming soon. We have a motion, a second to report. All those in favor? Opposed? **Sense 77 is reported.**
(4•0•0•1. Leg. Caracciolo not present)

Sense 78, sense of the Legislature resolution requesting that the Metropolitan

Transportation Authority and the New York State Legislature provide responsible oversight for Long Island Railroad users. They don't already? Legislator Lindsay.

LEG. LINDSAY:

There's a commuter council that has a number of openings that for some reason the state is not appointing people to; and they should be Long Island representatives, you know. The MTA just went through with the Long Island Railroad, fare increases, service cut backs. And we just at the earlier committee found out they're getting \$66 million in real estate taxes. Right?

MS. KNAPP:

Yes.

LEG. LINDSAY:

So, this is just to ask the state to appoint our people onto the commuter council and take a more favorable eye as far as fare increases and service cuts.

CHAIRMAN BINDER:

Motion by Legislator Lindsay to report, second by Legislator Kennedy. All those in favor?

Opposed? **Sense 78 is reported. (4•0•0•1. Leg. Caracciolo not present)**

Sense 79, memorializing resolution requesting State of New York to enact legislation permitting the County of Suffolk to allocate surcharge funds on cellular phone accounts for county police purposes.

Can I assume, from Counsel, a quick look at it that I took, it doesn't ask for more surcharges; just allows us to reallocate.

MS. KNAPP:

Actually what happens now is that the state receives the surcharges. And they have allocated a portion back to the counties. But they're not mandated to do so. And this basically says that •
• that we'd like them to amend that section of the law.

CHAIRMAN BINDER:

It says permitting the County of Suffolk to allocate. That's how the title goes. In other words •
•

MS. KNAPP:

The resolve, though, says that •• that the surcharge imposed on the cellular phone shall be a revenue to the County of Suffolk for police district funding and for emergency services.

CHAIRMAN BINDER:

No, no. But •• I understand. But I think we get a revenue from the surcharge. The question is •• I don't know if this is a question of new surcharge. That was my question. I wasn't sure ••

MS. KNAPP:

No. It's definitely not new surcharge. What it is is basically asking that the state give that to the county as a revenue as opposed to just allocating some of it on an occasional basis.

CHAIRMAN BINDER:

Okay. Sense 79, make a motion to report, second by Legislator Kennedy. All those in favor? Opposed? **Sense 79 is reported. (4•0•0•1. Leg. Caracciolo not present)**

Sense 80, memorializing resolution requesting State of New York to amend the alcohol beverage control law as it relates to advertising and marketing. What is this?

MS. KNAPP:

This one it was actually asked in committee and there was a certain discussion about it. This relates to Suffolk Community College. Legislator Caracappa •• Presiding Officer Caracappa received a request from the college. As you know, this Legislature has passed legislation that prohibited flyers in cars because there was a cost attached to the clean ups. And what's happened now is that it's become a cost of doing business for restaurants and bars. They don't care if they're fined because, I guess, they derive enough revenue from doing what they're doing on the college campuses; but they not only put them on the cars, but they're actually going into the buildings and leaving flyers and handing them out. And the kids •• the students sort of •• sometimes throw them on the floor. And so, when Legislator Caracappa talked about how can we strengthen this, the suggestion was made that perhaps the alcohol, the ABC laws could be amended to allow some sort of either revocation or suspension of a license if a tavern owner caused a community college or a college campus to incur an expense; a clean up

expense.

CHAIRMAN BINDER:

I don't know that I'll support it on the floor, but I'll report. Motion to report Legislator Lindsay, second by Legislator Cooper. All those in favor? Opposed? **Sense 80 is reported. (4•0•0•1. Leg. Caracciolo not present)** Anything else to come before the committee? If not, motion to adjourn, second by Legislator Kennedy. All those in favor? Opposed? We're adjourned.

(THE MEETING WAS CONCLUDED AT 3:36 PM)